

216040

STATE OF SOUTH CAROLINA )  
(  
(Caption of Case) )  
Happy Rabbit, LP on behalf of Windridge )  
Townhomes, )  
Complainant, )  
v. )  
Alpine Utilities, Inc., )  
Defendant. )

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
  
COVER SHEET

DOCKET  
NUMBER: 2008 - 360 - S

(Please type or print)  
Submitted by: Benjamin P. Mustian, Esquire SC Bar Number: 68269  
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Columbia, SC 29202 Other:  
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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

- ☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously  
☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

**WILLOUGHBY & HOEFER, P.A.**

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SPECIAL COUNSEL

March 31, 2009

**VIA HAND-DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

RECEIVED  
MAY 1 1 15 PM '09  
PUBLIC SERVICE  
COMMISSION

RE: Happy Rabbit, LP on behalf of Windridge Townhomes v. Alpine Utilities, Inc.;  
Docket No. 2008-360-S

Dear Mr. Terreni:

Enclosed for filing on behalf of Alpine Utilities, Inc. are the original and one (1) copy of Alpine Utilities, Inc.'s Motion for Summary Judgment in the above-referenced matter. By copy of this letter, I am serving a copy of these documents upon the parties of record and enclose a Certificate of Service to that effect.

I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies that are enclosed and returning the same to me via our courier.

If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**



Benjamin P. Mustian

BPM/cf

Enclosures

cc: Nanette S. Edwards, Esquire  
Richard L. Whitt, Esquire

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2008-360-S**

IN RE: )  
)  
Happy Rabbit, LP on behalf of Windridge, )  
Townhomes, )  
)  
Complainant )  
)  
v. )  
)  
Alpine Utilities, Inc., )  
)  
Defendant. )  
\_\_\_\_\_ )

**MOTION FOR  
SUMMARY JUDGMENT**

RECEIVED  
SEP 11 11:00 AM  
PUBLIC SERVICE  
COMMISSION

Alpine Utilities, Inc. ("Alpine" or "the Company") hereby moves this Honorable Commission, pursuant to 26 S.C. Code Ann. Regs. R. 103-829.A (Supp. 2008), for summary judgment as to the Complaint filed by Happy Rabbit, LP ("Happy Rabbit" or "Complainant") in the above-captioned docket. In support of this Motion, Alpine would respectfully show as follows:

**BACKGROUND**

On or about September 12, 2008, Happy Rabbit, which owns and operates twenty-three duplex buildings containing a total of forty-six units known as "Windridge Townhomes," commenced an action against Alpine in the Court of Common Pleas for Richland County in Civil Action No. 2008-CP-40-06619. Thereafter, on or about September 16, 2008, Mr. James C. Cook, as "General Partner" of Happy Rabbit, filed with the Commission a letter ("Complaint") on behalf of

Happy Rabbit in the instant docket. Happy Rabbit asserts in the Complaint that “Alpine has improperly established and maintained its utility relationship with Windridge [sic].” Pursuant to the testimony deadlines established in this docket, Happy Rabbit prefled direct and rebuttal testimony of Mr. Cook and Alpine filed direct and surrebuttal testimony of Mr. Robin Dial. While not specified in the Complaint, Mr. Cook asserts in his prefled direct testimony that Alpine is not providing sewer service to Happy Rabbit in accordance with S.C. Code Ann. Section 27-33-50 (Supp. 2008). See Happy Rabbit Witness Cook Direct Test. p. 2, ll. 1-17.

On or about March 11, 2009, Happy Rabbit filed with the Commission a Motion to Conform to Proof (“Motion to Conform”) asserting therein that Alpine “willfully overcharged Happy Rabbit” for sewer services rendered. Happy Rabbit further asserts that, on or about October 6, 2003, it contacted Alpine regarding Section 27-33-50 and requests that its Complaint be conformed so as to recover “all monies charged by Alpine and paid by Happy Rabbit, plus interest, from October 6, 2003 until the date of this Commission’s Order.” On March 20, 2009, Alpine filed a Return to the Motion to Conform and, as of the date of this filing, the Commission has not ruled on Happy Rabbit’s request.

### **UNDISPUTED FACTS**

Based upon the pleadings and discovery responses submitted in this proceeding as well as in the circuit court action pending between the two parties, the undisputed facts relevant to this matter are as follows:

- (a) Happy Rabbit entered into a customer relationship with Alpine for the provision of sewer services. Exhibit A, Amended Complainant’s Circuit Court Complaint, p. 2.
- (b) Happy Rabbit is a customer of Alpine Utilities. Exhibit B, Complainant’s Responses to 1st Request for Admissions, p. 1.

- (c) Alpine supplies sewer service to Happy Rabbit. Exhibit B, Complainant's Responses to 1st Request for Admissions, p. 1.
- (d) Alpine has provided sewer service to Happy Rabbit since December 29, 2005. Exhibit A, Complainant's Amended Circuit Court Complaint, p. 2.
- (e) Happy Rabbit has paid Alpine for sewer services on a monthly basis since December 29, 2005.<sup>1</sup> Exhibit A, Complainant's Amended Circuit Court Complaint, p. 2.
- (f) The tenants of Windridge Townhomes have not established customer relationships with Alpine for the purpose of obtaining sewer service at the residences they occupy pursuant to leases with Happy Rabbit. Exhibit B, Complainant's Responses to 1st Request for Admissions, p. 1.
- (g) Happy Rabbit contacted Alpine concerning Section 27-33-50 on or about October 6, 2003. Complainant's Motion to Conform, p. 1.
- (h) Alpine offered to provide sewer service to the individual tenants of Windridge Townhomes as individual customers of Alpine if the necessary facilities are installed so as to enable Alpine to provide sewer service in accordance with Commission regulations. Alpine Witness Dial Prefiled Direct Testimony, p. 12, l. 10 – p.13, l. 8.

### ARGUMENT

“Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Wiedemann v. Town of Hilton Head, 330 S.C. 532, 500 S.E.2d 783, 785 (1998). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Etheredge v. Richland Sch. Dist. 1, 330 S.C. 447, 499 S.E.2d 238, 241 (Ct. App. 1998). As more fully described below, Happy Rabbit's Complaint is based upon an erroneous reading of the plain language of S.C. Code Ann. Section 27-33-50, and a suggested interpretation of that language which would lead to an

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<sup>1</sup> As the Commission is well aware, Happy Rabbit has discontinued payment for sewer services continuing to be provided by Alpine during the pendency of this proceeding and is purportedly depositing the payment for these services into an escrow account. The amount currently due and owing to Alpine for sewer services rendered from August 2008 through April 2009 is \$6,791.24.

absurd result if adopted by the Commission. Additionally, Happy Rabbit has not installed the proper facilities which would enable Alpine to serve in the manner the Complainant desires. The undisputed facts in this matter further demonstrate that Happy Rabbit's Complaint is unsupported by law or fact inasmuch as Happy Rabbit is a customer of Alpine and receives sewer service from Alpine. These facts also show that Happy Rabbit has unreasonably delayed its request for relief while continuing to receive the benefit and value of sewer services from Alpine for a significant amount of time. Finally, the relief requested in this proceeding, if granted, would result in a windfall to Happy Rabbit thereby effectively precluding Alpine from collecting charges for sewer service rendered over the past five and one-half years.

(1) **Happy Rabbit's interpretation of Section 27-33-50 is erroneous and would lead to an absurd result.**

Happy Rabbit's Complaint is wholly founded upon its interpretation of Section 27-33-50<sup>2</sup> that a utility is prohibited from supplying sewer service to the owner of a property where the owner serves as the customer of the utility.<sup>3</sup> Contrary to Happy Rabbit's assertion, Section 27-33-50 does

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<sup>2</sup> S.C. Code Ann. § 27-33-50 states:

(A) Unless otherwise agreed in writing, a tenant has sole financial responsibility for gas, electric, water, sewerage, or garbage services provided to the premises the tenant leases, and a landlord is not liable for a tenant's account.

(B) An entity or utility providing gas, electric, water, sewerage, or garbage services must not:

- (1) require a landlord to execute an agreement to be responsible for all charges billed to premises leased by a tenant; or
- (2) discontinue or refuse to provide services to the premises the tenant leases based on the fact that the landlord refused to execute an agreement to be responsible for all the charges billed to the tenant leasing that premises.

(C) This provision does not apply to a landlord whose property is a multi-unit building consisting of four or more residential units served by a master meter or single connection.

<sup>3</sup> As set forth in its Motion to Dismiss filed with the Commission on or about October 24, 2008, Alpine asserts that any action which can arise under § 27-33-50 is not properly before this Commission and that the Commission does not have jurisdiction over this matter. The Commission's

not contain a blanket preclusion against a utility billing a landlord for monthly utility services provided to premises occupied by a landlord's tenants. Rather, the plain language and clear effect of the statute precludes a utility from requiring a landlord to be responsible for a tenant's account with the utility. Happy Rabbit has admitted that its tenants have not established a customer relationship with Alpine and, as such, are not customers of Alpine. Therefore, the plain language of Section 27-33-50 does not prohibit Alpine from charging Happy Rabbit, as an admitted customer, for sewer services which it has admittedly received.

Happy Rabbit's claim that Section 27-33-50 prohibits sewer utilities from serving property owners as customers therefore suggests that the plain language of the statute is, at best, ambiguous. "If a statute is susceptible to two reasonable interpretations, it is ambiguous." South Carolina Dept. of Social Services v. Lisa C., 380 S.C. 406, 416, 669 S.E.2d 647, 652 (Ct.App.2008) *citing* Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 489, 636 S.E.2d 598, 617 (2006). "When 'a statute is ambiguous, the Court must construe the terms of the statute.'" *Id.* *quoting* Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). "Statutes should not be construed

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enabling legislation does not grant it the authority to enforce disputes arising under Title 27 of the South Carolina Code. Moreover, Happy Rabbit clearly believes that the circuit court has jurisdiction over this matter inasmuch as it has asserted in its circuit court complaint that the "actions complained about [therein] are in violation of South Carolina Statutes (*sic*) under the jurisdiction of [the circuit court]." It is a fundamental principle of administrative law that agencies have no powers other than those granted to them by the General Assembly. See Kiawah Property Owners Group v. Public Serv. Comm'n of S.C., 359 S.C. 105, 109, 597 S.E.2d 145, 147 (2004) ("The PSC is a government agency of limited power and jurisdiction, which is conferred either expressly or impliedly by the General Assembly."); City of Camden v. Public Serv. Comm'n of S.C., 283 S.C. 380, 382, 323 S.E.2d 519, 521 (1984) ("The Public Service Commission is a governmental body of limited power and jurisdiction, and has only such powers as are conferred upon it either expressly or by reasonably necessary implication by the General Assembly."). Similarly, the Commission and the circuit court do not enjoy concurrent jurisdiction. *Cf.* S.C. Code Ann. §58-5-270 (Supp. 2008). Based on the foregoing, the Commission should summarily dismiss the Complaint inasmuch as the Commission does not have jurisdiction over the subject matter of this action as a matter of law.

so as to lead to an absurd result.” Gentry v. Yonce 337 S.C. 1, 13, 522 S.E.2d 137, 143 (1999).

If the plain language of the statute is ambiguous, Happy Rabbit’s interpretation of the statute would result in an absurd, unjust and inequitable result. To the contrary, “[a]n ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law.” Enos v. Doe, 380 S.C. 295, 304, 669 S.E.2d 619, 623 (Ct. App.2008). Happy Rabbit asserts that Section 27-33-50 required on its effective date that Alpine directly serve individual tenants residing in a building, with more than one residential unit and less than four residential units. Happy Rabbit’s reading of the statute suggests that the intent was not to prohibit utilities from requiring landlords to execute an agreement to be responsible for a tenant’s account, which is the clear effect of the statute. Rather, Happy Rabbit’s contorted reading of the statute implies that its intent was to relieve landlords from their obligations as utility customers. Such a statutory interpretation would lead to a result so plainly absurd that it simply could not have been intended by the legislature. Enos v. Doe at 304, 623.

Moreover, if the Commission were to accept Happy Rabbit’s interpretation, such a finding would suggest that, at the time of its enactment, this statute required every gas, electric, water and sewer utility across the state to reconfigure their infrastructure and utility systems, billing procedures, and customer relationships at a significant cost, and required each utility to force individual tenants to become direct customers of the utility. Notwithstanding such an illogical result, Happy Rabbit’s interpretation would also mean that such a requirement would have been imposed upon all gas, electric, water and sewer utilities in South Carolina, not for a public benefit, but for the benefit of private property owners. Despite the fact that such a requirement would have resulted in an unconstitutional taking of private utility property for private use (see S.C. Const. Art. I § 13(A)<sup>4</sup>),

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<sup>4</sup> “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being



such an interpretation clearly results in an absurd application of the statute and should be rejected by the Commission.<sup>5</sup>

(2) **The facilities serving Windridge Townhomes are insufficient to serve in the manner desired by Happy Rabbit.**

Even assuming Happy Rabbit's interpretation of the statute is correct, which is disputed, it is not possible for Alpine to directly serve the tenants of Windridge Townhomes because the necessary facilities have not been installed to serve individual customers. Each duplex building owned by Happy Rabbit, which each contain two rental units, is only served by a single customer service pipe. Alpine Witness Dial Direct Test. p. 9, ll. 16-17. As the Commission is aware, Regulation 103-555.B. states that a customer shall install and maintain that portion of the service pipe from the end of the utility's service pipe into the premises served and that "[e]ach customer's service pipe shall serve no more than one customer." Should Alpine be required to force Happy Rabbit's tenants to become customers of Alpine using the present facilities, a single customer service pipe will serve two customers. Such an arrangement would be inappropriate, not only because it would conflict with Commission regulations governing the provision of sewer service, but would also result in unreasonable restrictions on Alpine's ability to provide service. See Commission Regulation 103-555.B. For example, serving the tenants in such a manner would result in Alpine being unable to

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first made for the property." (Emphasis supplied).

<sup>5</sup> It is important to note that Happy Rabbit has requested that it be allowed to file testimony out of time of an "expert" witness who will purportedly opine as to the meaning of Section 27-33-50. See Complainant's Supplemental Answers to Alpine's First Set of Interrogatories. If Happy Rabbit's request in this regard is granted, Alpine may be required to obtain assistance from its own expert witness to rebut any unreasonable interpretations of the statute. Any costs associated with employing such a witness would be included with Alpine's considerable expenses which it has already incurred in defending this proceeding. These significant costs will necessarily be borne by all of Alpine's customers in its next rate proceeding and further litigation of this matter in view of the clear law and facts is not in the public interest.

distinguish between services provided to two separate tenants residing in the same duplex building. Therefore, Alpine would not be able to enforce its rights pursuant to Commission regulations – i.e., disconnecting a customer for nonpayment – without directly affecting the rights of a customer who has not breached his utility responsibilities. Happy Rabbit’s request to require Alpine to serve in this manner would be contrary to Commission regulations and would place an unjust and unreasonable burden on Alpine.

While Alpine has stated that it is willing to serve the individual tenants of Windridge Townhomes as customers if the proper facilities are installed, the expense to install such facilities are not required to be borne by Alpine. First, Commission regulations do not require Alpine to install the lines to serve in the manner desired by Happy Rabbit. Commission Regulation 103-540 provides that a utility is obliged to operate and maintain its facilities and equipment used in connection with the services it provides to any customer **“up to and including the point of delivery from systems or facilities owned by the customer.”** Second, as provided in Commission Regulations 103-502.4 and 103-502.7, the customer is responsible for the line which is located on the applicable tract of land and for transporting the wastewater to the Company’s facilities. In the case of the Windridge Townhomes development, the facilities owned by the customer are the collection lines/customer service pipes owned by Happy Rabbit. Alpine Witness Cook Direct Test. p. 10, ll. 2-3. Finally, Alpine has not contractually agreed to be responsible for maintaining or owning the customer service lines and is, therefore, only responsible for its facilities up to and including the point of delivery from systems or facilities owned by the customer – the customer service pipe. Alpine Witness Dial Direct Test. p. 11, l. 12 – p. 13, l. 8.

It would be unreasonable and contrary to Commission regulations and other law to require Alpine to install the facilities necessary to serve the individual units of the duplex complex in the

manner desired by Happy Rabbit. Additionally, if such a requirement could lawfully be imposed on Alpine, which Alpine denies, the cost of installing such facilities would necessarily be passed through to **all** of Alpine's customers in its next rate case proceeding. Such a requirement would be especially unreasonable inasmuch as it would require all of Alpine's ratepayers to bear the cost necessary to satisfy the desires of Happy Rabbit to negotiate different terms and conditions for the extension of Alpine's services to its property than were agreed to and have been observed by the owners of the property since 1984. Alpine Witness Dial Direct Test. p. 13, ll. 4-8.

(3) **Happy Rabbit is admittedly a customer of Alpine and has received sewer service from Alpine.**

In addition, the undisputed facts demonstrate that Happy Rabbit entered into a customer relationship with Alpine, continues to be Alpine's customer, and received and continues to receive sewer services from Alpine. See Exhibit B. Pursuant to Commission regulations, Alpine is authorized to charge its customers for sewer services rendered in accordance with its rate schedule. See R. 103-534.B. Therefore, Happy Rabbit is obligated to compensate Alpine for services rendered and any charges for sewer service rendered in accordance with its Commission approved rate schedule are due and owing to Alpine. Moreover, because the tenants of Windridge Townhomes admittedly have not established a customer relationship with the Company, Alpine does not have the authority to require them to remit payment for the services rendered to the property. The Commission's analysis of the Complaint should end here. The activity complained of is proper under law and the relief requested is simply not supported by the undisputed facts of this case.

(4) **Happy Rabbit entered into a contract for service with Alpine.**

Notwithstanding Alpine's assertion set forth in its pleadings that a contract with Happy Rabbit's predecessor is binding upon it and obligates Happy Rabbit to render payment for sewer

services rendered to Windridge Townhomes (see, e.g., Alpine Witness Dial Direct Test. p. 5, ll. 7-18), Alpine further asserts that Happy Rabbit, through its general partner, independently entered into a contractual arrangement as a customer of Alpine. Alpine Witness Cook Direct Test. p. 6, ll. 2-10. On or about December 15, 1999, Carolyn Cook, a general partner of Happy Rabbit, contacted Alpine to establish sewer service in her name. Commission Regulation 103-534 states that an accepted application for service constitutes a contract between the company and the applicant and obliges the applicant to pay for sewerage service in accordance with the utility's tariff. Therefore, even if no previous customer relationship existed, when Mrs. Cook contacted Alpine to continue service to the property, she became the customer of Alpine. Happy Rabbit, as a successor in interest to Mrs. Cook who is also a general partner of Happy Rabbit, is the customer today.

Moreover, Happy Rabbit has never requested that Alpine terminate its status as a customer. See Happy Rabbit Witness Cook Rebuttal Test. p., ll. 5-6. If Happy Rabbit no longer desires to be a customer of Alpine, it is free to terminate Alpine's service and require its tenants to individually establish customer accounts in accordance with Commission regulations and as permitted by Happy Rabbit's leases with its tenants.<sup>6</sup> Happy Rabbit Witness Cook Rebuttal Test. p. 7, ll. 23-31. Pursuant to Commission Regulation 103-534.C, a customer must notify the utility orally or in writing that the customer desires to terminate service and the utility is allowed a reasonable period of time after receiving notice to do so. By failing to avail itself of remedies afforded by Commission regulation and its contractual rights with its tenants, Happy Rabbit has chosen to continue as its

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<sup>6</sup> While the facilities are currently insufficient for Alpine to serve the property in this manner (paragraph 2, *supra*), Happy Rabbit could install the necessary facilities itself or require the tenants to bear this financial burden pursuant to Happy Rabbit's purported contractual rights. Happy Rabbit Witness Cook Rebuttal Test. p. 7, ll. 23-31.

customer and is, therefore, obligated to remit payment for sewer services rendered to it by Alpine in accordance with Alpine's Commission approved rate schedule.

**(5) Happy Rabbit has unreasonably delayed its request for relief.**

Happy Rabbit has also acknowledged in its circuit court proceeding that it has paid for sewer services provided by Alpine. See Exhibit A; See also fn. 1, *supra*. Happy Rabbit's Motion to Conform has not been ruled upon by the Commission and, therefore, its Complaint does not yet incorporate its requested relief for a monetary reimbursement. However, should the Commission be inclined to grant the requested relief in this regard, Alpine would assert that, if Happy Rabbit believed that the charges submitted in this regard were unlawful, Happy Rabbit, over the past **five and one-half years since its communication with Alpine on October 6, 2003**, could have refused payment to Alpine based upon its interpretation of the statute or could have previously initiated a proceeding with the South Carolina Office of Regulatory Staff or the Commission. Despite being placed on notice of Alpine's interpretation of the statute at that time, Happy Rabbit claims that it should be allowed to have received sewer services from Alpine which benefitted and enhanced the value of its property for five and one-half years. Notably, Happy Rabbit chose not to assert its claims set forth in the Complaint until after Alpine requested rate relief in Docket No. 2008-190-S – a proceeding in which it was a party of record. Now, at this late date, Happy Rabbit is seeking a "refund" of payments made for service that was indisputably provided. Such a request for relief is not supported by the law or facts of this case, is, at best, unreasonable, and should be summarily rejected by the Commission.

As demonstrated by Happy Rabbit's pleadings in this matter, Mr. Cook, a general partner of Happy Rabbit, was put on actual notice of facts and circumstances that some right might have been invaded or that some claim might exist no later than October 6, 2003. Therefore, a claim that could

have been asserted could have been brought at that time. “An injured party must act promptly when the facts and circumstances of the injury would place a reasonable person on notice that a claim against another party might exist.” Republic Contracting Corp. v. S.C. Dep’t of Highways and Public Transp., 332 S.C. 197, 503 S.E.2d 761, 766 (Ct. App. 1998). In this case, Happy Rabbit is essentially requesting that the Commission find that it is reasonable for a party to be made aware of a potential claim, delay acting on such purported claim for over five and one-half years while continuing to receive the benefit and value of the services rendered by Alpine, and then obtain a reimbursement for those services. Happy Rabbit offers no excuse for its unreasonable delay; rather, it sat idly by while Alpine continued to provide sewer services to Happy Rabbit over a substantial period of time. Such a request for relief is patently prejudicial, unreasonable and simply unfair to Alpine and should be dismissed by this Commission. Therefore, Alpine’s request for summary judgment should be granted because Happy Rabbit unreasonably delayed acting upon whatever rights it may have had.

**(6) If granted, the relief requested would result in a windfall to Happy Rabbit.**

Additionally, Happy Rabbit’s claim for reimbursement set forth in its Motion to Conform, if allowed, would amount to a windfall for the Complainant. Happy Rabbit has admitted that it is a customer of Alpine, that Happy Rabbit received and receives sewer service from Alpine, and that none of the tenants of Windridge Townhomes have established customer relationships with Alpine. Therefore, the relief which Happy Rabbit requests would essentially result in Happy Rabbit being reimbursed for charges rendered in connection with services which it and previous owners have received over the past five and one-half years at rates approved by the Commission, while giving Alpine no means of collecting for the service rendered. Such an outcome would allow Happy Rabbit to receive the benefit of free sewer service for this extended period of time at the expense of Alpine.

These facts demonstrate that Happy Rabbit's request in this regard would yield a windfall for the Complainant. Therefore, to the extent that the Commission grants Happy Rabbit's Motion to Conform, Alpine would assert that it is entitled to summary judgment on this claim as well.

### **CONCLUSION**

Alpine should be awarded summary judgment. Happy Rabbit's reading of Section 27-33-50 is erroneous, its interpretation of same is contrary to South Carolina law, and would lead to an absurd result if adopted by the Commission. Additionally, Happy Rabbit has not installed the necessary facilities to serve the property in the manner it desires. Happy Rabbit's pleadings and admissions in this matter further establish that Happy Rabbit entered into a customer relationship with Alpine, is admittedly a customer of Alpine, and has admittedly received sewer service from Alpine. Happy Rabbit has admitted that the tenants of Windridge Townhomes have not established a customer relationship with Alpine and, therefore, Alpine is unable to require the individual tenants to be responsible for sewer service provided to the Windridge Townhomes development. Finally, Happy Rabbit has unreasonably delayed its request for relief in this matter which, if allowed, would result in a windfall for the Complainant. For all of these reasons, the Commission should grant Alpine's motion for summary judgment.



John M.S. Hoefer  
Benjamin P. Mustian  
**WILLOUGHBY & HOEFER, P.A.**  
Post Office Box 8416  
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803-252-3300  
Attorneys for Defendant

Columbia, South Carolina  
This 31<sup>st</sup> day of March, 2009

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE CIRCUIT COURT FOR THE  
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-40-06619

Happy Rabbit, a South Carolina Limited  
Partnership and Carolyn L. Cook,  
Plaintiffs,

COMPLAINT  
(AMENDED)  
(JURY TRIAL DEMANDED)

VS.

Alpine Utilities, Inc.,  
Defendant.

Plaintiffs, Happy Rabbit, a South Carolina Limited Partnership (hereinafter, "Happy Rabbit") and Carolyn L. Cook (hereinafter, "Plaintiff Cook"), complaining of Defendant, Alpine Utilities, Inc., would allege and show unto the Court as follows:

### JURISDICTION

1. Upon information and belief Defendant, Alpine Utilities, Inc., (hereinafter, "Alpine") is a utility incorporated under the laws of the state of South Carolina, with its principal place of business located in Richland County, South Carolina and Alpine is currently conducting business in Richland County, South Carolina.

2. Plaintiff Happy Rabbit is the owner and operator of Windridge Townhomes, located in the 3300 block of Kay Street in Columbia, South Carolina (Richland County) (hereinafter, "Windridge") and Plaintiff Cook is a General Partner of Happy Rabbit and the previous owner of Windridge.

3. The acts complained about herein occurred in Richland County, South Carolina.

4. The acts complained about herein are in violation of South Carolina Statutes under the jurisdiction of this court.

5. Therefore, jurisdiction and venue in this Court is proper.

**COPY**



Amended Complaint  
March 18, 2009  
Page 2 of 6

COURSE AND PATTERN OF DEALINGS  
BETWEEN THE PARTIES

6. Paragraphs one through five above, are re-alleged.

7. Happy Rabbit is the present owner and operator of Windridge Townhomes, located in the 3300 block of Kay Street in Columbia, South Carolina (Richland County) and has been so since December 29, 2005, until the date of these presents. Prior to that date, ownership of Windridge was with Plaintiff Cook, namely through December 28, 2005.

8. Plaintiff Cook and later Plaintiff Happy Rabbit, entered into a utility customer relationship with Alpine for the provision of sewer services to Windridge. The utility required both Plaintiff Cook and Plaintiff Happy Rabbit and continues to require, Plaintiff Happy Rabbit, to continue in a business relationship, whereby Plaintiffs were and are, responsible for payment of monthly sewer bills for the forty-six tenancies in the twenty-three duplex apartment buildings of Windridge. Furthermore, Plaintiffs paid a definite monetary sum to Defendant Alpine on a monthly basis for a period exceeding three years, and therefore Plaintiff's damages are ascertainable.

9. Alpine insisted and continues to insist, that Plaintiffs be responsible for the sewer accounts for all tenants located in Windridge. Plaintiffs protested that such an arrangement was unlawful as early as October 6, 2003, but Alpine refused to change and continues to refuse to change, the character of sewer services to Windridge and required and continues to require, Plaintiffs to be responsible for the same. On October 6, 2003, James C. Cook, husband of Carolyn L. Cook, demanded that Alpine terminate sewer services to Windridge and that Alpine establish sewer accounts with the individual tenants of Windridge consistent with § 27-33-50, S.C. Code of Laws ANN., (1976, as amended). Plaintiffs' demands for Alpine to comply with § 27-33-50 were repeated several times. Defendant Alpine refused and continues to refuse, to comply with Plaintiffs' demand. Defendant Alpine's actions, in requiring Plaintiff Happy Rabbit to be responsible for its tenant's sewer services were and are, unlawful, unfair and deceptive.

Amended Complaint  
March 18, 2009  
Page 3 of 6

**FOR A FIRST CAUSE OF ACTION AGAINST ALPINE**  
(VIOLATION OF § 27-33-50)  
(S.C. CODE OF LAWS ANN., 1976, as amended)

10. Paragraphs one through nine above, are re-alleged.
11. § 27-33-50, S.C. Code of Laws ANN., (1976, as amended) reads in pertinent part as follows:

(A) Unless otherwise agreed in writing, a tenant has sole financial responsibility for gas, electric, water, sewerage, or garbage services provided to the premises the tenant leases, and a landlord is not liable for a tenant's account.

12. Plaintiffs did not agree in writing to be responsible for their tenant's sewer services at Windridge.

13. Defendant's actions, in refusing to terminate sewer services as demanded by Plaintiff's Cook's husband on October 6, 2003, and on several later dates, and in requiring the Plaintiffs to be responsible for the sewer services of their forty-six tenancies (twenty-three duplex buildings), is in direct contravention of § 27-33-50, S.C. Code of Laws ANN., (1976, as amended) and affected trade and commerce within the state of South Carolina.

**FOR A SECOND CAUSE OF ACTION AGAINST ALPINE**  
(VIOLATION OF SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT.)  
(§ 39-5-10 et seq., S.C. CODE OF LAWS ANN., 1976, AS AMENDED)

14. Paragraphs one through thirteen above, are re-alleged.
15. Defendant Alpine's actions described above, and as is set forth hereinabove in detail, are in clear violation of the statute.
16. Upon information and belief, Alpine has required in excess of fifty other individuals and entities (landlords and owners) to be responsible for the sewer utility services of their tenants, in violation of 27-33-50, S.C. Code of Laws ANN., (1976, as amended).
17. Defendant Alpine's actions described above, are an unlawful trade practice such that: (i) the Plaintiffs both suffered actual and clearly ascertainable damages (ii) there is an adverse impact on the public interest (iii) Defendant Alpine's actions are offensive to public

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March 18, 2009  
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policy, unlawful, unethical, unfair, deceptive, and oppressive and (iv) are unfair trade practices capable of repetition.

**DEMAND FOR PUNITIVE DAMAGES**

17. Paragraphs one through sixteen above, are re-alleged.

18. In addition to Defendant Alpine's violation of § 27-33-50, S.C. Code of Laws ANN., (1976, as amended), Defendant Alpine violated Public Service Commission of South Carolina, (hereinafter, "Commission") Regulation, R. 105-533 (3).

19. Also, Defendant Alpine admitted that the husband of Plaintiff Cook, contacted Defendant Alpine on October 6, 2003, regarding § 27-33-50.

20. Despite the requirements of § 27-33-50, and Plaintiff Cook's husband's contact with Defendant Alpine on October 6, 2003, Defendant Alpine continued to violate § 27-33-50, by requiring Plaintiff Cook and later, Plaintiff Happy Rabbit to be responsible for, and to pay for the sewer utility accounts of its tenants at Windridge.

21. Defendant Alpine has violated and has continued to violate § 27-33-50 and Commission Regulation, R. 105-533 (3).

22. Defendant Alpine's actions described hereinabove were unlawful, negligent, grossly negligent, careless, reckless, willful, and wanton in failing to comply with Commission Regulation, R. 105-533 (3) and § 27-33-50, S.C. Code of Laws ANN., (1976, as amended).

23. Accordingly, the Plaintiffs are entitled to an award of punitive damages in an amount to be determined by a jury.

**DEMAND FOR JURY TRIAL**

24. Paragraphs one through twenty-three above are re-alleged.

25. Plaintiffs demand that this matter be heard before a trial jury

Amended Complaint  
March 18, 2009  
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PRAYER FOR DAMAGES

WHEREFORE,

Plaintiffs are entitled to damages and a Judgment as follows:

**FOR A FIRST CAUSE OF ACTION** against Defendant Alpine, Plaintiffs are entitled to recover Twenty Two Thousand Three Hundred and Fifty Six Dollars (\$22,356) and a finding that, as a matter of law and under the facts of this case, Defendant Alpine cannot require Plaintiff Happy Rabbit to be responsible for sewer services provided to its tenants at Windridge.

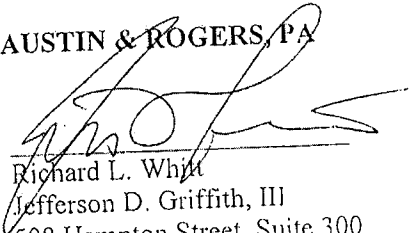
**FOR A SECOND CAUSE OF ACTION** against Defendant Alpine, Plaintiffs are entitled to recover Sixty Seven Thousand and Sixty Eight Dollars (\$67,068) plus the recovery of a reasonable Attorney's fees and the costs incurred in this Action.

**FOR AN AWARD OF PUNITIVE DAMAGES** against Defendant Alpine, in an amount to be determined by a jury.

**FOR SUCH OTHER AND FURTHER RELIEF AS THIS COURT MAY DEEM JUST AND REASONABLE.**

Respectfully Submitted,

AUSTIN & ROGERS, PA



Richard L. Whyte  
Jefferson D. Griffith, III  
508 Hampton Street, Suite 300  
Columbia, South Carolina 29201  
(803) 256-7442  
Attorneys for Plaintiffs

Columbia, South Carolina  
March 18, 2009

**COPY**

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2008-360-S

IN RE:

Happy Rabbit, LP on Behalf of,  
Windridge Townhomes,

Complainant,

v.

Alpine Utilities, Inc.,

Respondent

ANSWERS TO REQUESTS  
TO ADMIT

Complainant Happy Rabbit, LP on Behalf of, Windridge Townhomes, (hereinafter, "Happy Rabbit") hereby answers the Requests to Admit of Respondent, which were received by Counsel for Happy Rabbit on December 19, 2008. Any Request to Admit or sub-part thereof, not specifically addressed is denied. Happy Rabbit's answers follow:

1. Admit that Complainant Happy Rabbit, as owner or operator of Windridge Townhomes or otherwise, is a customer of Defendant Alpine Utilities, Inc.

**Admitted**

2. Admit that Defendant Alpine Utilities, Inc. currently supplies sewer service to Complainant Happy Rabbit.

**Admitted**

3. Admit that tenants of Windridge Townhomes have not established any customer relationships with Defendant Alpine Utilities, Inc. for the purpose of receiving sewer service at their units in Windridge Townhomes.

**Admitted**

Answers to Requests to Admit  
January 16, 2009  
Page 2 of 3

4. Admit that Complainant Happy Rabbit, as owner or operator of Windridge Townhomes or otherwise, makes sewer service available to the tenants of Windridge Townhomes.

**Complainant admits that sewer service is available to tenants of Windridge Townhomes, but sewer service is not made available by Happy Rabbit.**

5. Admit that Complainant Happy Rabbit, as owner or operator of Windridge Townhomes, has agreed to include sewer service as part of the rental or lease agreement with tenants of Windridge Townhomes.

**Denied.**

6. Admit that the sewer service available to tenants of Windridge Townhomes is provided by Complainant Happy Rabbit as a customer of Defendant Alpine Utilities, Inc.

**Complainant denies that it provides sewer service to tenants to Windridge Townhomes.**

7. Admit that TFB Construction Company constructed the sanitary sewage system to serve Windridge Townhomes.

**Information known or readily attainable by Complainant is insufficient to enable it to admit or deny.**

8. Admit that TFB Construction Company, for Complex Partnership, entered into an agreement with Defendant Alpine Utilities, Inc. whereby TFB Construction Company, for Complex Partnership, agreed to take sewer service from Defendant Alpine Utilities, Inc. as long as Defendant Alpine Utilities, Inc. remains approved to render such service from the South Carolina Department of Health and Environmental Control.

**Information known or readily attainable by Complainant is insufficient to enable it to admit or deny.**

9. Admit that Carolyn D. Cook, as prior owner of Windridge Townhomes, purchased Windridge Townhomes subject to the agreement between TFB Construction Company, for Complex Partnership and Defendant Alpine Utilities, Inc.

**Denied**

Answers to Requests to Admit  
January 16, 2009  
Page 3 of 3

10. Admit that Complainant Happy Rabbit purchased Windridge Townhomes subject to the agreement between TFB Construction Company, for Complex Partnership and Defendant Alpine Utilities, Inc.

**Denied**

Respectfully Submitted,  
**AUSTIN & ROGERS, PA**

\_\_\_\_\_/s/\_\_\_\_\_  
Richard L. Whitt  
508 Hampton Street, Suite 300  
Columbia, South Carolina 29201  
(803) 256-7442  
Attorney for Complainant

RLW/jjy  
January 16, 2009  
Columbia, South Carolina

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2008-360-S**

Happy Rabbit, LP on behalf of Windridge, )  
Townhomes, )  
 )  
Complainant )  
 )  
v. )  
 )  
Alpine Utilities, Inc., )  
 )  
Defendant. )  
\_\_\_\_\_ )

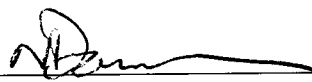
**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Defendant's**  
**Motion for Summary Judgment** via hand delivery to the address below:

Richard L. Whitt, Esquire  
**Austin & Rogers, P.A.**  
508 Hampton Street, Suite 300  
Columbia, SC 29211

I further certify that I have caused to be served one (1) copy of the above-referenced document  
by placing same in the care and custody of the United States Postal Service with first class  
postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, South Carolina 29211

  
\_\_\_\_\_  
Nathan Dawson

Columbia, South Carolina  
This 31<sup>st</sup> day of March, 2009.